GOVALAN ARUJUNA v. PENGERUSI, LEMBAGA PENCEGAHAN JENAYAH & ORS

HIGH COURT MALAYA, JOHOR BAHRU
MOHD NAZLAN GHAZALI JC
[JUDICIAL REVIEW NO: 25-9-03-2015]
7 DECEMBER 2015

ADMINISTRATIVE LAW: *Judicial review – Certiorari – Supervision order – Application to quash order pursuant to s. 15(1) of Prevention of Crime Act 1959 (PCA) – Interpretation of requirements thereof – Whether requirements complied with – Whether supervision order valid*

CIVIL PROCEDURE: *Certiorari – Supervision order – Validity – Application to quash order pursuant to s. 15(1) of Prevention of Crime Act 1959 (PCA) – Interpretation of requirements thereof – Whether requirements complied with – Whether supervision order valid*

The applicant was arrested on 13 November 2014 under s. 3(1) of the Prevention of Crime Act 1959 ('the PCA'). On 14 November 2014, the applicant was taken before a Magistrate who ordered the applicant to be remanded for 21 days until 4 December 2014 under s. 4(1)(a) of the PCA. On 4 December 2014, the Magistrate ordered that the applicant be further remanded for a period of 38 days pursuant to s. 4(2)(a) of the PCA. An inquiry officer appointed by the Minister of Home Affairs who conducted an inquiry under s. 9(1) of the Act concluded that there were reasonable grounds for believing that the applicant was a member of a group of persons who associated for purposes which included the commission of offences involving violence, thus falling within the registrable category under para. 2, Part I of the First Schedule to the PCA. In accordance with s. 10(2) of the PCA, the finding of the inquiry officer ('the finding') was forwarded to the officer having custody of the applicant, to be forthwith served on the applicant by the officer. The inquiry officer had also, in pursuance of the same s. 10(2), reported to the Prevention of Crime Board ('the Board') the grounds for his belief together with his finding, and informed the Board that the applicant had requested for a review of the finding by the Board under s. 11(1) of the PCA. The Board confirmed the finding of the inquiry officer. The name of the applicant was then entered into the Register of Criminals by the Registrar of Criminals under s. 12(1) of the PCA. Accordingly, the Board issued a Police Supervision Order ('Supervision Order') under s. 15(1) of the PCA directing the applicant to be subjected to the supervision of the police for two years. In consequence, the applicant applied by way of judicial review for an order of *certiorari* or declaration to quash the decision of the Board pursuant to O. 53 r. 3 of the Rules of Court 2012. The grounds relied on by the applicant in support of his application were: (i) there was non-compliance with s. 15(1) of the PCA as the Supervision Order did not specify the words that the Board 'is satisfied that it is necessary that control and supervision be

A exercised over the registered person' but instead the Supervision Order included the words 'Lembaga Pencegahan Jenayah berpuas hati penama telah didaftarkan oleh Pendaftar Penjenayah menurut Seksyen 12(1) APJ'; (ii) the Supervision Order was issued without a valid confirmation from the Registrar on the fact of registration; (iii) under s. 12(2), it was for the Board
B to direct registration by the Registrar, and the registration should not be made pursuant to the notification by the inquiry officer; (iv) pursuant to Perintah Pencegahan Jenayah (Pindaan Jadual Pertama dan Kedua) 2014, para. 2 of Part I of the First Schedule had been amended; therefore, the findings by the inquiry officer which referred to the previous provisions of para. 2 made the
C Supervision Order invalid; (v) non-compliance with s. 7B of the PCA in respect of the establishment of the Board.

Held (dismissing application with costs):

(1) The PCA does not stipulate that the Supervision Order issued by the Board must contain certain prescribed words or be in any particular
D form. In the instant case, the prerequisite 'it is necessary that control and supervision be exercised over the registered person' did not add much to the contents of the Supervision Order, if at all. It was plainly superfluous. By issuing the Supervision Order, it was patently obvious that the Board must have been satisfied that a Supervision Order should
E be made. It is incontrovertible that the very essence of the Supervision Order, manifest as it is to all and sundry, is to direct police supervision of the registered person. The title of the document itself is 'Perintah Pengawasan Polis Di Bawah Seksyen 15'. The non-inclusion of such words could not be justifiably characterised as a defect and neither could
F the contents of the Supervision Order be said to be lacking in clarity or any material particular to such a degree that affected the rights of the applicant in any manner deemed to be detrimental. There was no procedural non-compliance in relation to the contents of the Supervision Order. (paras 18, 29 & 30)

G **(2)** The applicant had wholly misconceived the statutory basis upon which the registration of the applicant had been effected by the Registrar. The applicant appeared to be taking the position that s. 12(1) and (2) was to be read conjunctively or that s. 12(2) in any event applied to the instant case. This was plainly erroneous. Section 12(1) and (2) must be read
H disjunctively as they provided alternative modes of registration by the Registrar. The former concerned registration following a report by the inquiry officer, and the latter permitted registration even without inquiry under the PCA, if so directed by the Board, *albeit* only for persons falling within the ambit of Part II of the First Schedule to the
I PCA. Therefore, there was absolutely no basis to suggest that this case involved s. 12(2) of the PCA. Nowhere in any of the documents exhibited to the affidavits of parties made reference to s. 12(2). Neither

did the facts and circumstances in the affidavits stated or implied that the Supervision Order was in any way in connection with the registrable categories under Part II of the First Schedule. Instead, this case unmistakably concerned para. 2 of Part I of the First Schedule, which therefore made s. 12(2) wholly irrelevant. (paras 31 & 33)

(3) There is no requirement in the PCA that the Registrar is the party that must make the notification of confirmation of registration to the Board, in order to enable the Board to exercise its discretion to consider making a direction for the issuance of a Supervision Order under s. 15(1). There was sufficient evidence from the affidavits of the parties that the steps and process involving, among others, the remand by the Magistrate, the inquiry by the inquiry officer, the review by the Board, the registration by the Registrar, and the making of the Supervision Order by the Board had been undertaken in accordance with the procedural requirements as stipulated under the PCA. Thus, the Board was fully justified in relying on the notification by the inquiry officer that the name of the applicant had been entered into the Register of Criminals. (para 34)

(4) The affidavits of the Chairman of the Board, the inquiry officer and the Registrar were consistent with the fact that the act of registering the name of the applicant in the Register by the Registrar pursuant to s. 12(1)(a) and (b) was performed subsequent to the requisite confirmation by the Board under s. 11(2)(a) of the finding by the inquiry officer following a request for a review under s. 11(1) of the PCA by the applicant. Further, there are no procedural requirements specified in the PCA governing the manner of notifications and the grounds thereof. Nor are there provisions requiring an order or direction be first issued to the Registrar of Criminals before he can lawfully register any person in the Register of Criminals. Therefore, it was not within the remit of this court to formulate rules that purported to address the same. (paras 36 & 37)

(5) There was no material change in the provisions concerning the making of an order of supervision under s. 15 of the PCA relevant to the instant case. The amendment which transferred the authority to issue the requisite order from the Minister to the Board was plainly procedural in nature. The more substantive complaint of the applicant however was that the basis of the Supervision Order appeared to be on the repealed para. 2 of Part I of the First Schedule instead of the corresponding provisions post-amendments. (para 43)

(6) Because of reliance on the former para. 2, it could not be said that the Supervision Order against the applicant involved the imposition of new obligations or in any way affected the pre-existing substantive rights of the applicant. Given the fact that the scope of the new para. 2 was considerably wider than the previous provisions in two principal

respects, the reliance by the inquiry officer on the premise of the former para. 2 was not fatal since the same basis could also be construed to fall within the contemplation of the wider jurisdictional reach of the amended para. 2 which was already in force at the material time. (para 43)

(7) It could not also be argued that reference to the former para. 2 is no longer valid following the amendments that have since come into force. Any other interpretation would create an unintended lacuna which would certainly not further the purpose of the amendments. It could not have been the intention of the Legislature that the provisions of the PCA concerning the Supervision Order cannot be invoked in respect of events which took place prior to the effectiveness of the transfer of the authority of the Minister, to the Board under the amended PCA. Nor can resort be now had to the Minister following the amendments, since he would no longer be seized of any jurisdictional authority under the PCA. This is consistent with the rule that Parliament does not legislate in vain and more fundamentally, a statutory interpretation should favour the promotion of the purpose underlying an Act as quite plainly provided for in s. 17A of the Interpretation Acts 1948 and 1967. (para 44)

(8) The affidavit of the Chairman of the Board had specifically averred in para. 13 not only his own qualifications but also the statement that the appointment of himself as the Chairman and that of four other members were valid as the same had been lawfully made by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong in accordance with s. 7B of the PCA. Firstly, and crucially, this averment had not been subsequently challenged by the applicant's affidavit-in-reply. Thus, such averment was to be deemed admitted by the applicant. Secondly, there was no basis to disbelieve the statement made by the Chairman of the Board in his affidavit concerning the said appointments, which averments were made in the course of performing an official duty in which he had no personal interest given his qualification and position. Thirdly, regard may also be had to s. 114(e) of the Evidence Act 1950 which could be invoked in favour of the said appointments. (para 46)

(9) Section 15A of the PCA affirms that there can be no judicial review in respect of any decision by the Board, except for issues of non-adherence to any procedural requirements governing such decision. For the myriad of reasons, the applicant had not, on a balance of probabilities, succeeded in establishing any procedural non-compliance in respect of the Supervision Order issued by the Board that could legitimately justify judicial intervention. (para 56)

Case(s) referred to:

Chong Kim Loy v. Timbalan Menteri Dalam Negeri, Malaysia & Anor [1990] 1 CLJ 61; [1990] 1 CLJ (Rep) 731 HC ***(refd)***

Council of Civil Service Union v. Minister for the Civil Service [1985] AC 374 ***(refd)***

Hanizam Hassan lwn. Pengerusi Lembaga Pencegahan Jenayah & Yang Lain [2015] 5 CLJ 223 HC ***(dist)***
Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs), Malaysia [1969] 1 LNS 65 FC ***(refd)***
Kumareshan Subramaniam v. Dato' Chor Chee Heung & Anor [2003] 4 CLJ 116 HC ***(dist)***
L Rajanderan R Letchumanan v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2010] 7 CLJ 653 FC ***(refd)***
Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 3 CLJ 914 FC ***(refd)***
Loh Kooi Choon v. Government of Malaysia [1975] 1 LNS 90 FC ***(refd)***
Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 4 CLJ 613 FC ***(refd)***
Mohd Yusof Mohd Ali lwn. Timbalan Menteri Dalam Negeri & Yang Lain [2010] 9 CLJ 65 HC ***(dist)***
Mok Han Liang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [1996] 3 CLJ 122 HC ***(dist)***
Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors [2006] 4 CLJ 687 FC ***(refd)***
Munisvaran Kannan v. Menteri Hal Ehwal Dalam Negeri Malaysia & Anor [2004] 3 CLJ 375 HC ***(dist)***
Ng Hee Thoong & Anor v. Public Bank Bhd [1995] 1 CLJ 609 CA ***(refd)***
Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Satu Lagi [1994] 4 CLJ 47 SC ***(dist)***
Norizan Bakar v. Panzana Enterprise Sdn Bhd [2013] 9 CLJ 409 FC ***(refd)***
Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***
R Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***
Ramu Kuppusamy lwn. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Yang Lain [2006] 4 CLJ 752 HC ***(dist)***
Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629 FC ***(refd)***
Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min [1976] 1 LNS 129 FC ***(dist)***
Sim Seoh Beng & Anor v. Koperasi Tunas Muda Sungai Ara Bhd [1995] 1 CLJ 491 CA ***(refd)***
SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors [2009] 6 CLJ 705 FC ***(dist)***
Su Yu Min v. Ketua Polis Negeri & Ors [2005] 3 CLJ 875 HC ***(refd)***
Sureshwaran V Rajoo lwn. Ketua Polis Negara & Yang Lain [2015] 3 CLJ 851 HC ***(refd)***
Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors v. Arasa Kumaran [2006] 4 CLJ 847 FC ***(refd)***
Zali Shariff v. Timbalan Menteri Dalam Negeri Malaysia & Anor [2004] 5 CLJ 296 HC ***(refd)***

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 6(1), 14
Emergency (Public Order and Prevention of Crime) Ordinance 1969, s. 4(1)
Evidence Act 1950, s. 114(e)
Federal Constitution, arts. 5(1), 151(2)
Interpretation Acts 1948 and 1967, s. 17A

Prevention of Crime Act 1959, ss. 3(1), 4(1)(a), (2)(a)(i), (ii), 6, 7B, 8, 9(1), 10(2), (3)(b), 11(1), (2)(a), 12(1)(a), (b), (2), 15(1), 15A, First Schedule Part 1 para. 2
Rules of Court 2012, O. 53 rr. 2(1), 3, 6

For the applicant - Sundarajan Sokalingam; M/s Sundarajan & Assocs
For the respondent - Mohamad Abazafree Mohd Abbas; SFC

Reported by Sandra Gabriel

JUDGMENT

Mohd Nazlan Ghazali JC:

Introduction

[1] This is an application for judicial review by the applicant for an order of *certiorari* or declaration to quash the decision of the Prevention of Crime Board which had issued a police supervision order ("supervision order") under s. 15 of the Prevention of Crime Act 1959 ("the PCA") against the former.

[2] This judgment discusses a number of issues on the interpretation of the requirements in the PCA relevant to the making of a supervision order, rendering the person named in the order to be subject to the supervision of the police for any period not exceeding five years.

Key Background Facts

[3] The applicant was arrested by the police on 13 November 2014 under s. 3(1) of the PCA. The police report lodged by the arresting officer disclosed the reasons for the belief (concerning suspicion of involvement of the applicant with a number of others in theft of cables) that grounds existed which would justify the holding of an inquiry under the Act.

[4] The next day on 14 November 2014 the applicant was taken before a Magistrate who, upon the production of the requisite statement in writing by a police officer not below the rank of an inspector, ordered the applicant be remanded for 21 days in police custody until 4 December 2014 under s. 4(1)(a) of the PCA.

[5] On 4 December 2014, the day the remand under s. 4(1)(a) was to expire, the applicant was taken before the Magistrate who upon the production of a statement in writing from each of the Deputy Public Prosecutor under s. 4(2)(a)(i) (on the existence of sufficient evidence to justify the holding of an inquiry under s. 9) and an Assistant Superintendent of Police under s. 4(2)(a)(ii) (concerning the intention to hold an inquiry into the case of the applicant under s. 9), ordered that the applicant be further remanded in custody for a period of 38 days pursuant to s. 4(2)(a) of the PCA.

[6] On the same day of 4 December 2014, the remand order under s. 4(2)(a) was granted, an inquiry officer earlier appointed by the Minister of Home Affairs under s. 8 of the PCA was notified of the same, and on

10 December 2014 the applicant was brought before the inquiry officer under s. 6 of the PCA who then conducted an inquiry under s. 9(1) of the Act to ascertain whether there were reasonable grounds to believe that the applicant had been involved in any registrable offences under the First Schedule to the PCA.

[7] The inquiry officer concluded that there were reasonable grounds for believing that the applicant was a member of a group of persons who associated for purposes which included the commission of offences involving violence, thus falling within the registrable category under para. 2, Part I of the First Schedule to the PCA. Accordingly, in accordance with s. 10(2) of the PCA, the finding of the inquiry officer ("the finding") was on 16 December 2014 forwarded to the officer having custody of the applicant, to be forthwith served on the applicant by the officer. On 17 December 2014 the applicant completed the requisite Borang I seeking a review of the finding under s. 11(1) of the Act by the Prevention of Crime Board ("the board").

[8] The inquiry officer had also on 23 December 2014 in pursuance of the same s. 10(2) reported to the board the grounds for his belief together with his finding, and informed the board that the applicant had requested for a review of the finding by the board under s. 11(1) of the PCA.

[9] On 6 January 2015, in pursuance of s. 11(2)(a), upon deliberation, the board confirmed the finding of the inquiry officer, following which the inquiry officer reported to the Registrar of Criminals that there were reasonable grounds for believing that the applicant came within the category of the registrable offences, and additionally that the board had also confirmed the finding by the inquiry officer.

[10] The name of the applicant was then on the same day of 6 January 2015 entered into the Register of Criminals by the Registrar of Criminals under s. 12(1) of the PCA. Following deliberations, the board later on the same day issued the supervision order, directing that the applicant, being a person whose name has been entered in the Register of Criminals be subject to the supervision of the police for two years in accordance with the conditions as specified in the supervision order made under s. 15(1) of the PCA.

The Applicant's Contentions On His Grounds For Relief

[11] The grounds relied on by the applicant to support his judicial review application to quash the decision of the board as stated in his supporting affidavits and the accompanying requisite statement made pursuant to O. 53 r. 3 Rules of Court 2012 ("O. 53 statement"), in the main, essentially highlighted what the applicant contended to be non-compliances by the relevant respondents with the various statutory requirements concerning not only his arrest and remand, but also subsequent steps in the process which led to the making of the supervision order, including in respect of the validity of the appointments of members of the board who arrived at the decision to issue the supervision order under s. 15(1) of the PCA.

[12] This judgment will examine the aforesaid grounds by evaluating the key points of submission encapsulating these grounds in the fashion as set out in the written submissions of the learned counsel for the applicant, and the pertinent replies by the learned SFC for the respondents, and as further elaborated on and clarified by the respective counsel at the hearing of the application before me on 8 September 2015.

Evaluation Of The Grounds For Review

[13] To start with, it is important that I should emphasise on the scope of the review process that could justify judicial intervention in the instant case. As made explicit in the application and the O. 53 statement, this is a judicial review application directed at the decision of the board, specifically the making of the supervision order against the applicant under s. 15(1) of the PCA.

[14] The law has defined the remit of the jurisdictional authority of the courts in this connection, and it is plain from the provisions of s. 15A of the PCA that the decisions of the board can only be challenged by way of judicial review on the basis of procedural non-compliance. Section 15A reads as follows:

> Judicial review of act or decision of Board
>
> 15A. (1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or finding or decision made by the Board in the exercise of its discretionary power in accordance with this Act, *except in regard to any question on compliance with any procedural requirement in this Act governing such act or decision*.
>
> (2) In this Act, "judicial review" includes proceedings instituted by way of -
>
> (a) an application for any of the prerogative orders of *mandamus*, prohibition and *certiorari*;
>
> (b) an application for a declaration or an injunction; or
>
> (c) any other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the Board in accordance with this Act.
>
> (emphasis added)

[15] Although this provision has been specifically incorporated into the PCA, it can be said that generally it is settled law that only in cases where violations of procedural requirements can be established can judicial review of decisions on preventive detention be permitted. The following passage from the judgment of Abdul Hamid Mohamed FCJ (as he then was) in *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914, *albeit* concerning a detention order under the Emergency (Public Order and Prevention of Crime) Ordinance 1969, is directly on point:

> In our view, courts must give effect to the amendments. That being the law, it is the duty of the courts to apply them. So, in a *habeas corpus* application where the detention order of the Minister made under s. 4(1) of the Ordinance or, for that matter, the equivalent ss. in ISA 1960 and DD(SPM) Act 1985, the first thing that the courts should do is to see whether the ground forwarded is one that falls within the meaning of procedural non-compliance or not. To determine the question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements. It is not for the courts to create procedural requirements because it is not the function of the courts to make law or rules. If there is no such procedural requirement then there cannot be non-compliance thereof. Only if there is that there can be non-compliance thereof and only then that the courts should consider whether, on the facts, there has been non-compliance.

For clarity, I should also add that it is the decision of the board that is in contention and not that of the chairman. The supervision order is made by the board and not the chairman. The latter has no authority to make any order under s. 15 of the PCA.

First Issue: Non-Compliance With Provision Of s. 15(1) Of The Prevention Of Crime Act 1959 ("The PCA")

[16] The applicant submitted that there is non-compliance with s. 15(1) as the supervision order did not specify the words that the Prevention of Crime Board "is satisfied that it is necessary that control and supervision be exercised over the registered person" but instead the supervision order included the words "Lembaga Pencegahan Jenayah berpuas hati penama telah didaftarkan oleh Pendaftar Penjenayah menurut Seksyen 12 (1) APJ".

[17] Section 15(1) of the PCA states the following:

> 15. (1) The Board may by order direct that any registered person named in the order shall be subject to the supervision of the police for any period not exceeding five years, if the Board is satisfied that it is necessary that control and supervision be exercised over the registered person but that it is not necessary to detain him and may renew any such order for a further period not exceeding five years at a time; and the registered person shall be conveyed under police escort to the State, district, mukim, town or village in which he is required to reside under subsection (2), if any.

The pertinent parts of the supervision order are reproduced hereunder:

> Akta Pencegahan Jenayah 1959
> Perintah Pengawasan Polis Di Bawah Seksyen 15
>
> Kepada:
>
> Ketua Polis Johor
> Lain-lain Pegawai Polis Dan Mereka Yang Dibenarkan
>
> Bahawasanya Lembaga Pencegahan Jenayah berpuas hati bahawa penama telah didaftarkan oleh Pendaftar Penjenayah menurut subseksyen 12(1) Akta Pencegahan Jenayah 1959, dan menurut kuasa-

A kuasa yang diberi kepada Lembaga Pencegahan Jenayah oleh subseksyen 15(1) Akta yang sama, Lembaga Pencegahan Jenayah, adalah dengan ini memerintahkan supaya Govalan a/l Arujuna dari Lokap Balai Polis Tapah, Perak Nombor Kad Pengenalan xxxxxx-xx-xxxx seorang yang berdaftar ditempatkan di bawah pengawasan polis bagi tempoh Dua (2) tahun mulai dari tarikh ini, dan semasa di bawah pengawasan tersebut, penama hendaklah tertakluk kepada sekatan-sekatan yang dinyatakan, iaitu:

B

(a) Penama hendaklah dikehendaki tinggal dalam kawasan Mukim Kahang, Daerah Kluang, Johor;

C (b) Penama tidak boleh meninggalkan Mukim Kahang di mana penama tinggal itu tanpa kebenaran secara bertulis dari Ketua Polis Johor;

(c) Penama hendaklah sentiasa memberitahu di mana rumah atau tempat penama tinggal kepada Ketua Polis Daerah di mana penama tinggal itu;

D (d) Penama hendaklah berada di dalam rumah atau tempat di mana penama tinggal di antara jam 6 petang / malam dan 6 pagi melainkan jika penama mendapat kebenaran khas yang sebaliknya daripada Ketua Polis Daerah itu;

E (e) Penama hendaklah melaporkan diri kepada Balai Polis Kahang pada tiap-tiap hari Isnin, Rabu & Jumaat pada tahun pertama dan Isnin dan Jumaat pada tahun kedua semasa menjalani tempoh Perintah Pengawasan Polis.

Bertarikh pada 06 hari bulan Januari 2015

tt.

F (Dato' Ahmad Kamal bin Md Shahid)
Pengerusi
Lembaga Pencegahan Jenayah
Untuk Dan Bagi Pihak Lembaga Pencegahan Jenayah

[18] The applicant's contention that the supervision order is defective is not tenable. In the first place, the PCA does not stipulate that the supervision order issued by the Board must contain certain prescribed words or be in any particular form. It cannot therefore on this basis be deemed to be invalid. In the case of *Chong Kim Loy v. Timbalan Menteri Dalam Negeri, Malaysia & Anor* [1990] 1 CLJ 61; [1990] 1 CLJ (Rep) 731, the application for a writ of *habeas corpus* to challenge the validity of a detention order under s. 6(1) of the Dangerous Drugs (Special Preventive Measure) Act 1985 was dismissed. The High Court dealt with the contention relevant to the instant case in the following manner:

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H

I The fifth point taken on behalf of the applicant was this: it was submitted that the detention order made by the Minister under s. 6(1) against him is bad on its face. In particular, it was argued that under s. 6(1) the Minister might make a detention order against any person the subject of the report of an Inquiry Officer under s. 5(4) provided that he is satisfied as to two matters, namely, (a) that the person concerned has been or is

> associated with any activity relating to or involving the trafficking in dangerous drugs and (b) that it is necessary in the interest of public order that such person be detained for a period not exceeding two years. But it was said that the detention order made against the applicant made no reference as to (b) and it was accordingly contended that by reason of this omission, the same was bad on the face of it.
>
> Now, nowhere in the Act is there any provision as to the form which the detention order should take. However, it is clear, that a written order properly authenticated by the Minister is essential before any lawful detention can be effected for the Act clearly contemplates the making of a document.
>
> ...
>
> In the present case, I consider that the detention order notwithstanding the omission aforesaid complies with these requirements and I therefore fail to see how it could be said that it is thereby invalidated.

[19] In an earlier decision of the Federal Court in *Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs), Malaysia* [1969] 1 LNS 65; [1969] 2 MLJ 129, on the point of challenge against the detention order, Suffian FJ (as he then was) had this to say:

> The order in the instant case followed the language of s. 8 of the Internal Security Act, except for an omission which, in my view, is immaterial. The document in question is not a conviction nor an indictment nor even a charge. There is nothing in the Act requiring that the order should be in any particular form and, in my judgment, the order is not invalid.

(See also *Zali Shariff v. Timbalan Menteri Dalam Negeri Malaysia & Anor* [2004] 5 CLJ 296).

[20] Secondly, in my view, any suggestion that evidence on the exercise of the discretionary powers of the Board is to be found only in the wordings of the supervision order (which essentially is a notification of the direction of the Board on supervision) is wholly misconceived. It is elementary that the relevant evidential support for the decision taken by the Board can in this context only be discovered in the affidavits affirmed by the duly authorised representatives of the Board especially the affidavit by the Chairman of the Board, and other appropriate parties. Having examined the affidavit deposed by the Chairman of the Board in encl. 8, I am of the view the applicant had been duly registered by the Registrar under s. 12(1) and that the Board is satisfied in light of the grounds specified in the affidavit that it was necessary that control and supervision be exercised in accordance with s. 15(1) of the PCA over the applicant without the necessity of detaining him. Paragraphs 12 and 16 of the affidavit of the Chairman of the Board state the following:

> 12. Saya ingin menegaskan bahawa semua tindakan yang diambil oleh Lembaga Pencegahan Jenayah adalah menurut kuasa dalam peruntukan undang-undang dalam mengeluarkan Perintah Pengawasan Polis tersebut. Dalam hal berkaitan Pemohon, Pemohon telah diperintahkan untuk ditempatkan di bawah pengawasan polis bagi tempoh dua (2) tahun daripada

A tarikh Perintah Pengawasan Polis dikeluarkan terhadap Pemohon iaitu pada 06.01.2015 dan dikehendaki tinggal dalam kawasan Mukim Kahang, Daerah Kluang, Johor. Saya sesungguhnya menegaskan bahawa Lembaga Pencegahan Jenayah di dalam membuat keputusan tempat Pemohon disekat tersebut telah mengambil kira keperluan bagi mencegah jenayah yang lebih efektif dan bagi pengawalan penjenayah-penjenayah dan
B orang-orang yang tidak diingini. Lembaga Pencegahan Jenayah juga telah berpuas hati bahawa ianya adalah perlu bagi suatu pengawalan dan pengawasan dilaksanakan terhadap Pemohon tanpa perlu menahan Pemohon. Sesalinan Perintah Pengawasan Polis tersebut adalah seperti yang dilampirkan dan ditunjukkan di sini sebagai "DAK-2" di dalam
C Afidavit saya ini.

...

16. Merujuk kepada perenggan 11 di dalam Afidavit Pemohon, saya menafikan dakwaan-dakwaan Pemohon dan sekeras-kerasnya menegaskan bahawa sebelum Lembaga Pencegahan Jenayah mengeluarkan Perintah
D Pengawasan Polis, Lembaga Pencegahan Jenayah terlebih dahulu telah mengambil kira kesemua faktor termasuklah kebajikan dan kesesuaian tempat sekatan. Walau bagaimanapun, tempat tinggal dan pekerjaan bukanlah tanggungjawab Lembaga Pencegahan Jenayah mahupun Responden-Responden lain tetapi merupakan tanggungjawab dan inisiatif Pemohon sendiri. Tambahan pula Pemohon tidak ditahan secara fizikal
E dan bebas melakukan aktiviti harian Pemohon tertakluk kepada syarat-syarat yang terkandung dalam Perintah Pengawasan Polis tersebut.

[21] Thirdly, whilst reference in the said supervision order to the registration of the applicant by the Registrar of Criminals may not be a mandatory requirement, it is not in any way specified in error, because the
F PCA provides that a supervision order can legally under s. 15(1) only be directed against those whose names have been entered into the Registrar of Criminals. Registration is quite plainly a *sine qua non* for the making of any supervision or detention order within the scheme of the PCA. Indeed, s. 15 on police supervision is the first section in Part IV of the PCA which reads
G "consequences of registration".

[22] In my view, there is thus no basis to suggest that the addition of the said words as appeared in the supervision order or the non-incorporation of the statement highlighted by the applicant would tantamount to evidence of the non-application of the mind of the Board to the facts of the case.

H **[23]** The applicant further referred to the case of *Kumareshan Subramaniam v. Dato' Chor Chee Heung & Anor* [2003] 4 CLJ 116 which concerns preventive detention under the Dangerous Drugs (Special Preventive Measures) Act 1985, and relied on the following part of the judgment:

I [1] Under the Act, the Minister may direct that a person be detained, if he is satisfied that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, and if the Minister is satisfied that it is necessary in the interest of public order that such person be detained. Therefore, the Minister may direct that a person be detained only if he is satisfied on both counts.

[24] In my view, the more relevant parts from the judgment are the sentences which specifically refer to the contents of the detention order, and as immediately appearing after the end of the aforesaid paragraph, as follows:

> To state one and not state the other would only give the impression that the DO was made on the sole basis of the one stated prerequisite. The DO could not have informed the applicant that the Minister was satisfied that it was necessary in the interest of public order that he be detained.

[25] It is useful that in order to better appreciate the differences between this and the instant case that I state the relevant legislative provisions concerning the detention order under the Dangerous Drugs (Special Preventive Measures) Act 1985, in particular s. 6(1) of the Act which provides as follows:

> Whenever the Minister, after considering:
>
> (a) the complete report of investigation submitted under subsection 3(3); and
>
> (b) the report of the Inquiry Officer submitted under subsection 5(4)
>
> **is satisfied** with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he **is satisfied** that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a "detention order") direct that such person be detained for a period not exceeding two years.
>
> (emphasis added)

[26] It is clear that the discretion of the minister in question relates to the fact that he may only issue the detention order if he is satisfied that both criteria are met. The issue however is whether it is necessary for these two criteria be set out in the detention order itself. This is answered in the affirmative in *Kumareshan Subramaniam*. But it is imperative that the reasoning for such a conclusion be understood in its proper context. The High Court in that case did actually make the following pertinent observation:

> The fact of the matter is that the Act **does not** stipulate that the order must also state, in the preamble, body, or postscript, that the Minister was satisfied on both counts.
>
> (emphasis added)

[27] The detention order in that case was however ruled by the High Court to be defective because stating one criterion or prerequisite but not the other "would only give the impression that the order was made on the sole basis of only the stated prerequisite".

[28] Other than the fact that the instant case concerns a different piece of legislation, and more so involves a police supervision and not a detention order, the exercise of discretionary authority by the Board under s. 15(1) of

the PCA involves, unlike in *Kumareshan Subramaniam*, in my view only one prerequisite, which is "it is necessary that control and supervision be exercised over the registered person ...". Its non-reference in the supervision order could not therefore give any adverse impression in the nature of the concerns expressed in *Kumareshan Subramaniam*.

[29] The other reason supporting, if not reinforcing the validity of the supervision order in the instant case is that stating the prerequisite "it is necessary that control and supervision be exercised over the registered person" does not add much to the contents of the supervision order, if at all. It is plainly superfluous. By issuing the supervision order, it is patently obvious that the Board must have been satisfied that a supervision order should be made. It is incontrovertible that the very essence of the supervision order, manifest as it is to all and sundry is to direct police supervision of the registered person. The title of the document itself is "Perintah Pengawasan Polis Di Bawah Seksyen 15". I am not unmindful of the often-quoted *dicta* in *Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min* [1976] 1 LNS 129; [1976] 2 MLJ 245 that states as follows:

> where personal liberty is concerned an applicant in applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty.

[30] But in the instant case, for the reasons state above, the non-inclusion of such words cannot be justifiably characterised as a defect in the first place, and in any event neither can the contents of the supervision order be said to be lacking in clarity or any material particular to such a degree that affects the rights of the applicant in any manner deemed to be detrimental. There is no procedural non-compliance in relation to the contents of the supervision order. And the instant case in any event does not involve a writ of *habeas corpus* against any detention order.

Second Issue: Non-Compliance With s. 12(1)

[31] The applicant submitted that the Inquiry Officer and the Registrar of Criminals did not follow the relevant statutory provisions, thus rendering the supervision order not valid. In particular it was contended that the supervision order was issued without a valid confirmation from the Registrar on the fact of registration. Further, it was submitted that under s. 12(2), it is for the Board to direct registration by the Registrar, and the registration should not be made pursuant to the notification by the Inquiry Officer.

[32] It is in my view clear that the applicant has wholly misconceived the statutory basis upon which the registration of the applicant had been effected by the Registrar. Given its importance to this application, the entirety of s. 12 is reproduced hereunder:

PART III

REGISTRATION

Registration of persons believed to be members of any of the registrable categories

12. (1) The Registrar shall keep a Register for the purposes of this Act, in which shall be entered the name of every person-

(a) who is reported by an Inquiry Officer to be a person in respect of whom there are reasonable grounds for believing that he is a member of any of the registrable categories; and

(b) who has not requested any review under section 11, **or in respect of whom the Board has confirmed the finding made under subsection 10(2)** or made or confirmed the decision under paragraph 10(3)(b),

together with such other particulars as may be prescribed.

(2) The Board may, if it considers it in the interest of public order or security to do so, with or without inquiry under this Act direct the Registrar to enter in the Register the name, and such other particulars as may be prescribed, of any person who is a member of any of the registrable categories prescribed in Part II of the First Schedule.

(emphasis added)

[33] Learned counsel for the applicant appeared to be taking the position that ss. 12(1) and (2) are to be read conjunctively or that s. 12(2) in any event applied to the instant case. This is in my view plainly erroneous. Sections 12(1) and (2) must be read disjunctively as they provide alternative modes of registration by the Registrar. The former concerns registration following a report by the Inquiry Officer, and the latter permits registration even without inquiry under the PCA, if so directed by the Board, *albeit* only for persons falling within the ambit of Part II of the First Schedule to the PCA. Therefore, there is absolutely no basis to suggest that this case involves s. 12(2) of the PCA. Nowhere in any of the documents exhibited to the affidavits of parties made reference to s. 12(2). Neither did the facts and circumstances in the affidavits state or imply that the supervision order is in any way in connection with the registrable categories under Part II of the First Schedule. Instead, as stated above, this case unmistakably concerns para. 2 of Part I of the First Schedule, which therefore makes s. 12(2) wholly irrelevant. Indeed, the supervision order itself makes reference to s. 12(1) of the PCA.

[34] Further, although s. 12 (1) is the applicable statutory provision, there is however no requirement in the PCA that the Registrar is the party that must make the notification of confirmation of registration to the Board, in order to enable the Board to exercise its discretion to consider making a direction for the issuance of a supervision order under s. 15(1). There is

A sufficient evidence from the affidavits of parties that the steps and process involving, among others the remand by the Magistrate, the inquiry by the Inquiry Officer, the review by the Board, the registration by the Registrar, and the making of the supervision order by the Board had been undertaken in accordance with the procedural requirements as stipulated under the PCA. Thus, the Board was fully justified in relying on the notification by the Inquiry Officer (as per para. 9 of the affidavit filed by the Chairman of the Board affirmed on 12 June 2015) that the name of the applicant had been entered into the Register of Criminals on 6 January 2015 by the Registrar, as confirmed by the affidavits of the Inquiry Officer dated 12 June 2015 (at para. 17) and by that of the Registrar, also dated 12 June 2015 (at para. 5). In addition, I do not find basis for any suggestion, and neither has the applicant furnished cogent evidence to show that the relevant procedural safeguards had not been followed or that it was in any manner inherently incredible or improbable for the various key acts and decisions involving the s. 11 review by the Board, notification to the Registrar, registration by Registrar, notification back to the Board *via* the Inquiry Officer, and ultimately the decision of the Board to issue the supervision order to have all taken place within the day of 6 January 2015. The affirmations contained in the affidavits of especially the Chairman of the Board, the Inquiry Officer and the Registrar of Criminals are consistent in their description of the events, acts and decisions in the morning and afternoon of 6 January 2015. In short I summarise the chronology of events of 6 January 2015 based on the affidavits to be as follows:

(a) the Board met in the morning to undertake the review of the finding made under s. 10(2) by the Inquiry Officer and decided to confirm the finding under s. 11(2)(a);

(b) the Inquiry Officer, after having been notified that the Board had confirmed the finding, reported the same under s. 12(1)(a) and (b) to the Registrar of Criminals;

(c) the Registrar effected the registration of the applicant in the Registrar of Criminals;

(d) the Registrar informed the Inquiry Officer of the fact of registration of the applicant;

(e) the Inquiry Officer confirmed to the Board of the registration; and

(f) the Board met again in the afternoon to deliberate and decide on the issuance of the supervision order under s. 15(1).

[35] The applicant's reliance on the case of *Hanizam Hassan v. Pengerusi Lembaga Pencegahan Jenayah & Yang Lain* [2015] 5 CLJ 223 is also of little assistance to his case. In that case, which also involves the PCA, it was held that the registration by the Registrar of the name of the applicant prior to confirmation by the Board of its finding pursuant to a review under

s. 10(3)(b) was a procedural non-compliance which would assist the case of the applicant. In *Hanizam Hassan*, the Inquiry Officer had similarly made a finding under s. 10(2) of the PCA on his satisfaction on the existence of reasonable grounds for the belief that the applicant in that case was a member of a registrable category. The High Court held among others that s. 12(1)(a) and (b) should be read conjunctively and that registration in the Register of Criminals can only be legally effected following confirmation of the finding of the Inquiry Officer by the Board. As registration was done prior to the requisite confirmation by the Board, this was ruled to be a procedural non-compliance, which together with a number of other transgressions, resulted in a successful judicial review application and the quashing of the police supervision order. The following passage from the judgment of the High Court in *Hanizam Hassan* highlighted by learned counsel for the applicant bears examination:

> [119] Mahkamah ini tidak bersetuju dengan hujahan PKP yang terpelajar yang menyatakan peruntukan s. 12(1)(a) dan (b) Akta itu perlu dibaca secara berasingan (disjunctive) dan bukannya bersama-sama. Mahkamah ini bersetuju dengan hujahan peguam pemohon yang terpelajar, pendaftaran nama pemohon dalam bahagian III hanya akan dilakukan selepas Lembaga mengesahkan dapatan pegawai siasatan sebagaimana yang diperuntukkan di bawah s. 10(3)(b) Akta itu. Mahkamah ini berpendapat tindakan pendaftar yang mendaftarkan nama pemohon pada 2 Jun 2014 sebelum ianya disahkan oleh Lembaga Pencegahan Jenayah pada 3 Jun 2014 ianya bercanggah dengan peruntukan yang berkaitan.

[36] However, in the instant case, it is clear and not disputed that the affidavits of the Chairman of the Board, the Inquiry Officer and the Registrar as mentioned earlier are consistent in stating that the act of registering the name of the applicant in the Register by Registrar pursuant to s. 12(1)(a) and (b) was performed subsequent to the requisite confirmation by the Board under s. 11(2)(a) of the finding by the Inquiry Officer following a request for a review under s. 11(1) of the PCA by the applicant.

[37] It is worthy of emphasis that there are no procedural requirements specified in the PCA governing the manner of notifications and the grounds thereof. Nor are there provisions requiring an order or direction be first issued to the Registrar of Criminals before he can lawfully register any person in the Register of Criminals. It is not at any rate within the remit of this court to formulate rules that purport to address the same (see *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914).

[38] The relevant statutory provisions are clearly ss. 10(2) and 12(1)(a) and (b). In any event, I should briefly state that I am not entirely convinced of the relevance of s.10(3)(b) referred to in *Hanizam Hassan* in that case itself since s. 10(3)(b) is only applicable when the Board decides there are sufficient grounds for believing that the person in question is a member of any of the registrable offences despite the prior contrary finding of insufficient grounds

under s. 10(1) by the Inquiry Officer. Thus, s. 10(3)(b) can only be relevant if s. 10(1) is applicable. The facts in *Hanizam Hassan* as well as in the instant case clearly state that the relevant Inquiry Officer made a finding under s. 10(2) of the PCA and not s. 10(1). Sections 10(3)(b) and 12(2) therefore are not relevant in the instant case.

[39] The applicant's reliance on another High Court decision in *Mok Han Liang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [1996] 3 CLJ 122; [1996] 1 AMR 1247 is similarly misplaced. The preventive order under the Emergency (Public Order and Prevention of Crime) Ordinance 1969 in that case was ruled to be defective since the erroneous deletion of the applicable limb of s. 4(1) meant that the decision-maker had not applied his mind sufficiently when signing the detention order. But the supervision order in the instant case is not afflicted by any infirmity even remotely resembling the defect identified in *Mok Han Liang*.

Third Issue: The Board Had Acted Retrospectively

[40] The applicant contended that the Board, which existence and functions were only made statutorily effective on 2 April 2014 cannot legally have jurisdiction to consider matters such as in the instant case, which arose prior to this date. It is not disputed that the events giving rise to the inquiry under the PCA occurred before the establishment of the Board. Furthermore, the applicant argued that pursuant to Perintah Pencegahan Jenayah (Pindaan Jadual Pertama dan Kedua) 2014, para. 2 of Part I of the First Schedule has been amended such that the findings by the Inquiry Officer which refer to the previous provisions of para. 2 would make the same and consequently the supervision order, not valid.

[41] Akta Pencegahan Jenayah (Pindaan dan Pemerluasan) 2014 (Akta A 1459) among others, transferred the authority of the Minister of Home Affairs under the PCA pre amendment to the Board effective 2 April 2014. It is trite law that the general rule of construction of statutes is that in the absence of express words or necessary implication, statutes affecting substantive rights or creating new liabilities are prospective in effect whilst those affecting procedures are retrospective (see *Sim Seoh Beng v. Koperasi Tunas Muda Sungai Ara Bhd* [1995] 1 CLJ 491). In the Federal Court case of *Loh Kooi Choon v. Government of Malaysia* [1975] 1 LNS 90; [1977] 2 MLJ 187, Raja Azlan Shah FJ (as His Highness then was) had this to say:

> In so far as an Act of Parliament is concerned, the rule of construction is that in order to determine whether it is retrospective in its operation, the language of the Act itself must be looked into bearing in mind that an Act is not to be construed retrospectively unless it is clear that such was the intention of Parliament. If such was the intention that the Act was to be given retrospective effect even in respect of substantive right or pending proceeding, the courts have no alternative but to give effect to the Act even though the consequences might appear harsh and unjust.

> The principle that parties are to be governed by the law in force on the date when an action is instituted and any subsequent amendment or alteration cannot affect vested right or pending proceeding, must always be read subject to the corollary that Parliament can always expressly provide that vested right or pending proceeding be affected by the amendment of the law.

[42] The present and previous provisions of para. 2 of Part I to the First Schedule to the PCA read as follows:

(i) Present paragraph 2

> 2. Persons who belong to or consort with any group, body, gang or association of two or more persons who associate for purposes which include the commission of offences under the Penal Code.

(ii) Previous paragraph 2

> 2. Persons who belong to any group, body, gang or association of five or more persons who associate for purposes which include the commission of offences involving violence or extortion.

[43] There is in my view no material change in the provisions concerning the making of an order of supervision under s. 15 of the PCA relevant to the instant case. I am in full agreement with the submission of the learned SFC that the amendment which transferred the authority to issue the requisite order from the minister to the Board is plainly procedural in nature. The more substantive complaint of the applicant however is that the basis of the supervision order appears to be on the repealed para. 2 of Part I of the First Schedule instead of the corresponding provisions post-amendments. However, in the instant case, precisely because of reliance on the former para. 2 that it cannot be said that the supervision order against the applicant in this case involves the imposition of new obligations or in any way affects the pre-existing substantive rights of the applicant. This is given the fact that the scope of the new para. 2 is considerably wider than the previous provisions in two principal respects. First, the new para. 2 lowers the threshold on the size of the group falling within para. 2, from a minimum of five to merely two. Secondly, whilst the former provisions were referable to offences involving violence or extortion, the amended para. 2 concerns more generally "offences under the Penal Code". Thus, reliance by the Inquiry Officer on the premise of the former para. 2 in my assessment is not fatal since the same basis can also be construed to fall within the contemplation of the wider jurisdictional reach of the amended para. 2 which is already in force at the material time.

[44] At the same time, it cannot also be argued that reference to the former para. 2 is no longer valid following the amendments that have since come into force. Any other interpretation would create an unintended *lacuna* which would certainly not further the purpose of the amendments. It could not have been the intention of the legislature that the provisions of the PCA

concerning the supervision order could not be invoked in respect of events which took place prior to the effectiveness of the transfer of the authority of the minister, to the Board under the amended PCA. Nor can resort be now had to the minister following the amendments, since he would no longer be seized of any jurisdictional authority under the PCA. This is consistent with the rule that Parliament does not legislate in vain and more fundamentally, a statutory interpretation should favour the promotion of the purpose underlying an Act as quite plainly provided for in s. 17A of the Interpretation Acts 1948 and 1967, which reads as follows:

> Regard to be had to the purpose of Act
>
> 17A. In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

Indeed, the Federal Court in *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265 ruled that it is clear beyond doubt that in view of s. 17A of the Interpretation Acts 1948 and 1967 there is now a statutory recognition for the courts to take a purposive approach in the interpretation of statutes.

Fourth Issue: Non-Compliance With s. 7B

[45] The applicant further submitted that the relevant respondent had failed to prove compliance with s. 7B in respect of the establishment of the Board especially concerning the appointment of four other members of the Board other than the Chairman. Section 7B reads thus:

> Prevention of Crime Board
>
> 7B. (1) There shall be established a Prevention of Crime Board which shall consist of the following members to be appointed by the Yang di-Pertuan Agong:
>
> (a) a Chairman, who shall be or have been, or be qualified to be, a judge of the Federal Court, the Court of Appeal or a High Court; and
>
> (b) four other members.
>
> (2) Every member of the Board shall, unless he sooner resigns, hold office for a period not exceeding two years and is eligible for re-appointment for not more than one term.
>
> (3) Every member of the Board may, at any time resign his office, by giving notice in writing to the Yang di-Pertuan Agong.

[46] However, it is noted that the affidavit of the Chairman of the Board had specifically averred in para. 13 not only his own qualifications but also the statement that the appointment of himself as Chairman and that of four other members were valid as the same had been lawfully made by Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong in accordance with

s. 7B of the PCA. Firstly, and crucially, this averment has not been subsequently challenged by the affidavit in reply filed by the applicant. Thus, the trite law established in *Ng Hee Thoong & Anor v. Public Bank Bhd* [1995] 1 CLJ 609 would render such averment to be deemed admitted by the applicant. Secondly, I agree with the contention of the learned SFC that there is no basis to disbelieve the statement made by the Chairman of the Board in his affidavit concerning the said appointments, which averments were made in the course of performing an official duty in which he had no personal interest given his qualification and position (see *Su Yu Min v. Ketua Polis Negeri & Ors* [2005] 3 CLJ 875). Thirdly, regard may also be had to s. 114(e) of the Evidence Act 1950 which can be invoked in favour of the said appointments. It reads as follows:

> Court may presume existence of certain fact
>
> 114. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> ILLUSTRATIONS
>
> The court may presume-
>
> ...
>
> (e) that judicial and official acts have been regularly performed; ...

[47] Furthermore, the applicant's reliance on the case of *Mohd Yusof Mohd Ali lwn. Timbalan Menteri Dalam Negeri & Yang Lain* [2010] 9 CLJ 65 is not tenable and can be distinguished. The following part of the judgment of the High Court was cited by learned counsel for the applicant:

> (3) Pihak responden telah gagal untuk melepaskan beban pembuktian yang terletak di atas mereka bagi membuktikan/menjelaskan penubuhan Lembaga Penasihat khususnya mengenai dua orang ahli yang dilantik bersama-sama dengan Pengerusi Lembaga Penasihat. Tiada dalam mana-mana afidavit jawapan responden-responden pun yang menjelaskan sekurang-kurangnya nama dua Ahli Lembaga Penasihat yang bersidang dengan Pengerusinya untuk mendengar representasi dari pemohon pada hari itu. Tiada alasan diberikan mengapa penjelasan ini tidak boleh dibuat, jauh sekali ianya akan menggugat ketenteraman awam. Responden telah gagal pada dasarnya melepaskan beban yang terletak di atas bahu mereka. (perenggan 22 & 23)

In that case however, unlike in the instant case, there was no evidence or any averment that the appointment of two other members of Lembaga Penasihat had been validly made by Yang di-Pertuan Agong when it is clear that art. 151(2) of the Federal Constitution mandates the same. The court also relied on the principle in the Federal Court decision in *SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors* [2009] 6 CLJ 705 that in an application for *habeas corpus*, the burden of satisfying the court that the

detention is lawful lies throughout on the detaining authority. The instant case, in contradistinction, concerns the PCA and does not involve any detention order.

Fifth Issue: Absence Of Affidavit In Reply By Relevant Officers

[48] The applicant also alleged that there was no proper and sufficient explanation or rebuttal filed by the relevant parties representing the respondents in respect of the claim of the absence of service of the finding by the Inquiry Officer on the applicant. Whilst the applicant's reliance on cases such as *Ramu Kuppusamy lwn. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Yang Lain* [2006] 4 CLJ 752 to support the contention that failure to rebut a specific averment may appear to amount to a concession in favour of the applicant, and on cases such as *Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Satu Lagi* [1994] 4 CLJ 47; [1994] 3 AMR 2047 and *Munisvaran Kannan v. Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [2004] 3 CLJ 375 which emphasise the importance of strict conformity with the procedures of restrictive laws is not inaccurate, they are in my view not relevant to the proceedings before this court.

[49] In the first place, most of the cases cited by the applicant concern applications for writs of *habeas corpus* where it is trite that those responsible for the detention must establish that the procedures relating to the detention are valid and lawful. The instant case does not involve a writ of *habeas corpus* as the decision in question is on the police supervision order and not a detention order. It plainly involves a judicial review and not a criminal application. However even then, matters pertaining to arrest or detention (let alone the service of a document such as the finding in the instant case) prior to the making of a detention order are not relevant. The Federal Court in *Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 4 CLJ 613 established that a writ of *habeas corpus* must be directed against the current detention order when it has been made subsequent to a prior arrest and detention. Any illegality in the prior arrest and detention cannot therefore be the subject of inquiry (see also the re-affirmation of this rule in subsequent Federal Court decisions such as in *Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors v. Arasa Kumaran* [2006] 4 CLJ 847 and *L Rajanderan R Letchumanan v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2010] 7 CLJ 653). The following passages from the judgment of Augustine Paul FCJ in *Mohd Faizal Haris* are one of relevance:

> [8] Generally a writ of *habeas corpus* must be directed against the current order of detention even when the earlier arrest is irregular. It follows that where a detention order has been made under s. 6(1) the writ of *habeas corpus* must be directed only against that order even if the earlier arrest and detention are irregular. Thus any irregularity in a detention order made under s. 3(2) when it has been superseded by one under s. 6(1) is not a relevant matter for consideration. A prior illegality which has ceased cannot be the subject matter of inquiry.

[50] In a subsequent decision of the Federal Court in *Muhammad Jailani Kasim v. Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* [2006] 4 CLJ 687, the Federal Court clarified that *Mohd Faizal Haris* only renders irrelevant defects in a prior detention when the current detention order is lawful. In *Muhammad Jailani Kasim*, the challenge was not on the validity of the prior arrest but as to the regularity of the subsequent detention order made under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 in light of defects in the procedure leading to the making of the order. Judicial review was allowed because it was found that there was no evidence given by the Inquiry Officer of his role in the preparation of the requisite report which must be taken into account in the decision making process undertaken by the minister in connection with the issuance of the detention order under s. 6 of the said Act. The report by the Inquiry Officer was not tendered. Neither was there any evidence to demonstrate a claim to privilege under s. 14 of the said Act to justify non-production on the ground of such disclosure being against national interest.

[51] In the instant case, and drawing on the principles from some of the aforesaid case law authorities concerning detention orders, the applicant cannot therefore legitimately anchor its challenge against the decision of the Board in making the supervision order on the premise of the alleged non-service of the finding made by the Inquiry Officer on the applicant, because similar to the issue of prior arrest in the case of *Mohd Faizal Haris*, this non-service argument does not attack the supervision order itself in the sense that any alleged failure of service on the applicant cannot be said to affect the basis of the matters the Board must consider in the making of the supervision order. Further, for the same reason, nor can the case of the applicant in the instant case be supported by *Muhammad Jailani Kasim* since any alleged non-service is not a form of defect in the procedure leading to the making of the supervision order by the Board. Furthermore, in the instant case, unlike in *Muhammad Jailani Kasim*, the Inquiry Officer did affirm an affidavit as well as produce a copy of his finding as an exhibit to his affidavit, later relied on by Board in deciding to issue the supervision order. Nor can the applicant validly allege that the supervision order itself was not served on the applicant. It is clear from the affidavit affirmed by the relevant Police Inspector from Jabatan Siasatan Jenayah, IPD Daerah Tapah that he had at his office on 6 January 2015, at 10.30pm served on and explained the contents of the supervision order to the applicant. This was further fortified by another affidavit, where it was affirmed by another officer that he had translated to the applicant the said supervision order in Tamil. The well-established principle that a detention not in accordance with the law is inconsistent with the fundamental rights guaranteed under art. 5(1) of the Federal Constitution (see *Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min* [1976] 1 LNS 129; [1976] 2 MLJ 245) or the right of the detainee to be made known of the grounds of detention

order has no direct application to the instant case because in the first place evidence shows service was properly made and secondly the instant case concerns police supervision, not preventive detention.

[52] Furthermore, and in my judgment much more fundamentally, I reiterate that the instant case concerns a judicial review application. The cases cited by the applicant primarily relate to applications for writ of *habeas corpus*. It is well entrenched in administrative law that the focus of a judicial review application is to challenge a decision of a public authority and in this instant case the relief under O. 53 of the Rules of Court 2012 is for a declaration or order of *certiorari* to quash the decision of the Board making the supervision order under s. 15 of the PCA. It is to be noted that the definition of "judicial review" in s. 15A as earlier stated in this judgment does not at the material time expressly include the writ of *habeas corpus*. Indeed even though the source of the power to grant public law remedies as contained in para. 1 of the Schedule to the Court of Judicature Act 1964 includes writ of *habeas corpus*, the said para. 1 must be read in conjunction with O. 53 of the RC 2012. As O. 53 r. 2(1) excludes an order for *habeas corpus* from the scope of judicial review application, the remedy of *habeas corpus* can legally only be pursued under the relevant provisions of the Criminal Procedure Code.

[53] Yet another basis why the application by the applicant on this ground cannot succeed is that the issues, as defined in his own pleadings, specifically in the application for leave and in the application for judicial review focus entirely on the challenge to quash the supervision order. The applicant in *Hanizam Hassan* for example additionally pleaded for the order that the finding made by the Inquiry Officer under s. 10(2) be quashed thus permitting judicial inquiry into circumstances concerning the making of the finding and into the statutory provisions relating thereto, in order to examine the extent of compliance or otherwise, having a bearing on the validity of the finding. Similarly, in *Sureshwaran V Rajoo lwn. Ketua Polis Negara & Yang Lain* [2015] 3 CLJ 851, the application was not only to quash the police supervision order under s. 15 but also the finding by the Inquiry Officer under s. 10(2) of the PCA. The same was rejected by the High Court because the application pursued the wrong mode of proceedings by way of a criminal application instead of by way of judicial review. It is trite that judicial review proceedings are similarly governed by the binding nature of pleadings. In the landmark judicial review case of *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147, Eusoff Chin CJ held as follows:

> It is trite law that a party is bound by its pleadings. The Industrial Court must scrutinise the pleadings and identify the issues, take evidence, hear the parties' arguments and finally pronounce its judgment having strict regard to the issues. It is true that the Industrial Court is not bound by all the technicalities of a civil Court (s. 30 of the Industrial Relations Act 1967) but it must follow the same general pattern. The object of pleadings is to determine what are the issues and to narrow the area of conflict. The

> Industrial Court cannot ignore the pleadings and treat them as mere pedantry or formalism, because if it does so, it may lose sight of the issues, admit evidence irrelevant to the issues or reject evidence relevant to the issues and come to the wrong conclusion. The Industrial Court must at all times keep itself alert to the issues and attend to matters it is bound to consider.

The principle has since been followed and reiterated, including in a subsequent Federal Court decision in *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629.

[54] Additionally, it should be highlighted that despite the allegation of non-service of the finding in the instant case, a copy of the finding as exhibited to the affidavit of the Inquiry Officer actually showed that the applicant acknowledged receipt of the finding on 16 December 2014 as stated in the Borang Serahan Dapatan. This is further supported by the fact that the applicant had on the following date completed Borang I pursuant to s. 11(1) of the PCA seeking a review by the Board of the finding made by the Inquiry Officer. A copy of Borang I itself is exhibited to the affidavit affirmed by the Chairman of the Board. Further, despite the applicant questioning the adequacy of the clarification by parties representing the respondents, the applicant did not avail himself to apply to cross examine them as permitted by O.53 r. 6 relevant to judicial review proceedings.

[55] In any event, at its most basic, the applicant did not clearly and sufficiently specify the premise upon which the decision of the Board is to be quashed, and my evaluation cannot thus arrive at any conclusion other than that the applicant has patently failed to prove on a balance of probabilities any of the established grounds of either illegality, irrationality, procedural impropriety or proportionality as enunciated in the landmark decision of the House of Lords in *Council of Civil Service Union v. Minister for the Civil Service* [1985] AC 374, as well as leading Malaysian authorities such as in *R Rama Chandran* and *Norizan Bakar v. Panzana Enterprise Sdn Bhd* [2013] 9 CLJ 409; [2013] 6 AMR 338 that could justifiably attract the application of public law remedy of declaration or *certiorari* being prayed for by the applicant *vis-à-vis* the supervision order.

Conclusion

[56] Section 15A of the PCA affirms that there can be no judicial review in respect of any decision by the Board, except for issues of non-adherence to any procedural requirements governing such decision. For the myriad of reasons I discussed above, I find that the applicant has not on a balance of probabilities succeeded in establishing any procedural non-compliance in respect of the supervision order issued by the Board that can legitimately justify judicial intervention. I therefore dismiss the application with costs.